

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-026-02-1-5-00851
Petitioner: Michael Mantich
Respondent: Department of Local Government Finance
Parcel #: 007-28-29-0068-0006
Assessment Year: 2002

The Indiana Board of Tax Review (the "Board") issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. An informal hearing as described in Ind. Code § 6-1.1-4-33 was held February 4, 2004, in Lake County, Indiana. The Department of Local Government Finance (DLGF) determined that the Petitioner's property tax assessment for the subject property was \$140,600, and notified the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on April 28, 2004.
3. The Board issued a notice of hearing to the parties on September 30, 2004.
4. A hearing was held on November 5, 2004, in Crown Point, Indiana before Special Master Peter Salvesson.

Facts

5. The subject property is located at 1316 West Fred Street, Whiting, in North Township.
6. The subject property is a duplex located on 0.083 acres of land.
7. The Special Master did not conduct an on-site visit of the property.
 - a) Assessed Value of the subject property as determined by the DLGF:
Land \$15,400 Improvements \$125,200 Total \$140,600
 - b) Assessed Value requested verbally by the Petitioner during hearing:
Land \$15,900 Improvements \$84,200 Total \$100,100
8. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.

9. Persons sworn in at hearing:

For Petitioner: Michael Mantich, Owner

For Respondent: Stephen H. Yohler, Representing the DLGF

Issue

10. Summary of Petitioner's contentions in support of alleged error in assessment:

- a) A sampling of 20 properties located within a two-mile radius of the subject property shows that the current assessment of the subject property is too high. *Mantich testimony; Pet'r Ex. 4.* Those other properties have more square footage than the subject property, yet most are assessed for amounts substantially less than the subject property. *Id.* Of those twenty (20), the properties located at 1215 Fred Street, 1310 Fred Street and 2048 Indianapolis Street are the most comparable to the subject property. *Id.*
- b) The properties identified by the Petitioner are assessed lower than fair market value. *Mantich argument.* The subject property should be assessed in a like manner. *Id.*
- c) The subject improvement suffers from deterioration in its exterior brick and chimney, and the roof is in need of repair. *Mantich testimony.*
- d) While the subject property is assessed as residential, it is a commercial property for loan purposes. *Id.* The Petitioner rented the property at the time of the assessment. *Id.*

11. Summary of Respondent's contentions in support of assessment:

- a) Many of the properties identified by the Petitioner are assessed as commercial properties. The subject, by contrast, is assessed as a residential property. *Yohler argument.*
- b) The sales analysis performed by CLT supports the current assessment. *Id.*

Record

12. The official record for this matter is made up of the following:

- a) The Petition.
- b) The tape recording of the hearing labeled Lake Co - 564.
- c) Exhibits:

Petitioner's Exhibit 1: Notice of Assessment – November 14, 2003
Petitioner's Exhibit 2: Notice of Final Assessment – March 31, 2004
Petitioner's Exhibit 3: Form 139L Petition
Petitioner's Exhibit 4: Properties Matrix and Photographs

Respondent's Exhibit 1: Form 139L Petition
Respondent's Exhibit 2: Subject Property Record Card
Respondent's Exhibit 3: Subject Photograph

Board Exhibit A: Form 139L Petition
Board Exhibit B: Notice of Hearing
Board Exhibit C: Hearing Sign-In Sheet

d) These Findings and Conclusions.

Analysis

13. The most applicable governing cases are:

- a) A petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect, and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
- b) In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Wash. Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) ("[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis").
- c) Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner's evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.

14. The Petitioner did not provide sufficient evidence to support his contentions. This conclusion was arrived at because:

- a) The Petitioner contends that the assessment of the subject property is too high in comparison to the assessments of twenty (20) other properties within a two-mile radius of the subject property.
- b) In making this argument, the Petitioner essentially relies on a sales comparison approach to establish the market value in use of the subject property. *See* 2002 REAL PROPERTY ASSESSMENT MANUAL 2 (incorporated by reference at 50 IAC 2.3-1-

- 2)(stating that the sales comparison approach “estimates the total value of the property directly by comparing it to similar, or comparable, properties that have sold in the market.”); *See also, Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 469 (Ind. Tax Ct. 2005). The primary difference between the Petitioner’s methodology and the sales comparison approach is that the Petitioner seeks to establish the value of the subject property by analyzing the *assessments* of purportedly comparable properties rather than the *sale prices* of those properties. Nonetheless, the requirements for assigning probative value to evidence derived from a sales comparison approach are equally applicable to the assessment comparison approach used by the Petitioner in this case.
- c) In order to effectively use the sales comparison approach as evidence in a property assessment appeal, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is “similar” or “comparable” to another property do not constitute probative evidence of the comparability of the two properties. *Long*, 821 N.E.2d at 470. Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.*
- d) In the case at bar, the Petitioner submitted a matrix listing the twenty (20) properties in question by street address. The matrix also provides information regarding the number of units contained in those buildings and their respective assessed values. *Pet’r Ex. 4*. In addition, the Petitioner pointed to exterior photographs of each of the twenty (20) buildings and the subject dwelling. *Id.* Finally, the Petitioner testified that virtually all of the buildings are larger than the subject dwelling. *Mantich testimony*.
- e) The Petitioner clearly did not engage in the type of analysis contemplated by *Long*. At most, the Petitioner identified three characteristics for comparison - exterior construction, size and number of living units. Moreover, the Petitioner did not explain how any differences between the twenty (20) purportedly comparable buildings and the subject dwelling affect their relative market values or their proper assessments under the Real Property Assessment Guidelines for 2002 – Version A (Guidelines). It is true that the Petitioner also submitted property record cards for each of the properties in question. Those property record cards set forth many additional characteristics of the properties in question that the Petitioner did not specifically identify in his testimony. The Petitioner, however, did not discuss those characteristics. It is not the Board’s responsibility to review, *sua sponte*, all of the documents submitted by the Petitioner to determine whether the properties in question are comparable to each other. *Long*, 821 N.E.2d at 471. The burden for establishing comparability rested with the Petitioner. *Id.*
- f) Nonetheless, the Petitioner did identify three properties that he viewed as being the most comparable to the subject property. Even a cursory review of the relevant

property record cards, however, reveals significant differences between those properties and the subject property. For example, the two-unit dwelling located at 1215 Fred Street does not have an attic and has a grade “D+2.” *Pet’r Ex. 4*. The subject property has an attic and a grade of “C+1.” *Id.* The two-unit dwelling located at 1310 Fred Street has significantly less finished living area, as well as a smaller attic and a smaller basement than does the subject dwelling. *Id.* Moreover, that dwelling has a grade of “D.” *Id.* Finally, the four-unit building located at 2048 Indianapolis Blvd. is located in a different assessment neighborhood than the subject property. *Id.* The Petitioner did not explain how any of those differences affect the relative market values of the purportedly comparable properties and the subject property.

- g) Finally, the Petitioner testified that the subject dwelling suffers from cracks in its exterior brick and chimney and that its roof needs to be repaired. *Mantich testimony*. The Petitioner, however, did not provide any evidence to quantify the effect of those conditions on subject property’s market value. The Petitioner similarly failed to explain how the above-described deterioration would justify the assignment of a condition rating lower than the rating of “average” currently assigned to the subject dwelling. In fact, the conditions the Petitioner identified appear reflect precisely the type of normal wear and tear described by the Guidelines for dwellings in “average” condition. *See* GUIDELINES, ch. 3 at 60.
- h) Based on the foregoing, the Petitioner did not make a prima facie case for a change in assessment.

Conclusion

- 15. The Petitioner did not establish a prima facie case. The Board finds in favor of the Respondent.

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now determines that the assessment should not be changed.

ISSUED: **9-01-05**

Commissioner,
Indiana Board of Tax Review

IMPORTANT NOTICE

Michael Mantich
Findings & Conclusions
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- Appeal Rights -

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Court Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code §§ 4-21.5-5-7(b)(4), 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Trial Rules are available on the Internet at http://www.in.gov/judiciary/rules/trial_proc/index.html. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.